

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:18-cv-686-J-32MCR

BRINKER DATA INCIDENT
LITIGATION

ORDER

In his June 26, 2020 deposition, Plaintiff Eric Steinmetz testified that he had taken notes during phone calls he had with Chili's and Brinker regarding the data breach incident that is the subject of this litigation. Steinmetz had not previously produced these notes, nor had he listed them on any privilege log. In response to Brinker's subsequent request that he produce the notes, Steinmetz claimed they were protected by the attorney/client privilege and served a privilege log. Brinker now moves to compel the notes (Doc. 128); Steinmetz filed a response in opposition (Doc. 134).

As part of its review of Brinker's motion to compel (Doc. 128), the Court determined that it should review the documents on Plaintiff's privilege log (Doc. 128, Ex. 5) in camera. (Doc. 135). Plaintiff filed the documents under seal on October 1, 2020. (Doc. S-136).¹

¹ The privilege log only includes entries for some, but not all, of the correspondence that was submitted to the Court for in camera review. All of the correspondence submitted to the Court for review should have been included on

Upon review, the Court finds that while some of the correspondence is privileged, the contents of two of the emails are not privileged. Steinmetz testified at his deposition that he was not contemplating litigation and did not call Chili's or Brinker at the behest of an attorney. (However, the emails are sent to an attorney). The two emails provide factual information regarding the content of those calls. The Court finds that those emails should be produced. The emails have been excerpted from the documents submitted to the Court and are attached hereto.

Accordingly, Brinker's Motion to Compel Documents (Doc. 128) is **GRANTED in part** and **DENIED in part**, as stated herein.

DONE AND ORDERED in Jacksonville, Florida the 4th day of December, 2020.



Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge

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Copies:

Counsel of record

the privilege log. (See Docs. S-136, S-136-1, S-136-2, S-136-3).